

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 09-50026(REG)

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6 In the Matter of:

7

8 GENERAL MOTORS CORPORATION,

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10 Debtor.

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12 - - - - - x

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 October 15, 2012

18 9:47 AM

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23 B E F O R E :

24 HON ROBERT E. GERBER

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: Debtors' 214th Omnibus Objection to Claim
2 (Administrative Proofs of Claim for Equity Interests)

3

4 Hearing re: Debtors' 215th Omnibus Objection to Claim
5 (Administrative Proofs of Claim for Equity Interests)

6

7 Hearing re: Motion by Linda Mitchell for Relief from the
8 Automatic Stay

9

10 Hearing re: Objection to Proof of Claim 28560 filed by
11 Alicia E. Calhoun (Splinter Union Employee Claim)

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13 Hearing re: 286th Omnibus Objection to Claim(s) Number: (No
14 Liability Claims)

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25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

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21 BY: DAVID N. GRIFFITHS, ESQ.

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1 ALSO APPEARED TELEPHONICALLY:

2 AUSTIN VIALL

3 RECECCA VAILL

4 LINDA N. MITCHELL

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P R O C E E D I N G S

THE COURT: Okay. GM Motors Liquidation.

(Pause)

THE COURT: I have a New GM presence today don't
I?

MR. DAVIDSON: Yes, Your Honor, Scott Davidson
from King & Spalding.

THE COURT: Okay, Mr. Davidson.

And Mr. Griffiths --

MR. GRIFFITHS: Good morning, Your Honor.

THE COURT: And Ms. Greer?

MS. GREER: Good morning, Your Honor.

THE COURT: Good morning. Okay. Mr. Griffiths,
you came up first, can I get your recommendations as to how
to proceed today?

MR. GRIFFITHS: Thank you, Your Honor.

Just to check there's no one attending an
CourtCall?

COURTCALL OPERATOR: We do have -- Your Honor, we
have three participants on CourtCall. Or actually I'm
sorry, we have four at this time.

THE COURT: Okay. My CourtCall log shows Linda N.
Mitchell as being scheduled to be on the phone.

Ms. Mitchell, are you on?

MS. MITCHELL: Yes, Your Honor, I am.

1 THE COURT: Okay. And two others appear to be --
2 well, they say their firm is Weil, Gotshal but they say
3 they're creditors. Austin Viall?

4 MS. VIALL: Yes. It's Austin and Rebecca --

5 THE COURT: Okay.

6 MS. VIALL: -- Viall.

7 THE COURT: How do you pronounce that, ma'am?

8 MS. VIALL: Viall.

9 THE COURT: Viall, okay, thank you.

10 MS. VIALL: Yes.

11 THE COURT: All right. Anybody else appearing
12 today in GM who thinks he or she might want to be heard?
13 Okay, I guess not.

14 All right. Thank you. Go ahead, please,
15 Mr. Griffiths.

16 MR. GRIFFITHS: Thank you, Your Honor. David
17 Griffiths of Weil, Gotshal & Manges for Motors Liquidation
18 Company GUC Trust.

19 Your Honor, items and 1 and 2 on the agenda this
20 morning are the 214th and 215th omnibus objection to claims.
21 They relate to the reclassification of equity interest from
22 the filled statuses administrative proofs of claims.

23 Your Honor, we don't believe that these matters
24 are contention. I know that Mr. and Mrs. Viall --
25 V-I-A-L-L -- appear in the 215th omnibus objections to

1 claims.

2 Mr. and Mrs. Viall appear to have purchased a
3 large amount of stock in General Motors Corporation both
4 prior to and after the filing of the Chapter 11. They're
5 seeking to recovery on those equity interests both against
6 Motors Liquidation Company and against E*TRADE who is their
7 broker in buying the securities.

8 Obviously Motors Liquidation Company is not
9 seeking to expunge the equity interest, but merely to
10 reclassify them from their status as administrative proof of
11 claim to just a regular equity interest, which as Your Honor
12 well knows, receives no recovery in these Chapter 11 cases.

13 Your Honor, without further adieu I propose to
14 hear from the claimants themselves. The GUC Trust is happy
15 to rest on their existing submissions.

16 THE COURT: Okay. So will I be hearing from
17 Mr. Viall or Ms. Viall?

18 MS. VIALL: Yes, Ms. Viall.

19 THE COURT: Okay. Go ahead, please, Ms. Viall.

20 MS. VIALL: Okay. We had purchased the stock as a
21 security for our retirement and were hoping to be able to,
22 you know, have a retirement set us.

23 We were assured or were told by E*TRADE that the
24 stocks would be exchanged for General Motors stock when
25 General Motors went back online. And consequently, now we

1 are told that it's -- it will not be and we're asking that
2 it be.

3 THE COURT: Ms. Viall, I understand the hardship
4 on you. Do you want to make any legal points as to whether
5 your claim for stock should be treated as a creditor claim
6 instead?

7 MS. VIALL: I don't exactly understand what you're
8 asking. I'm sorry.

9 THE COURT: Okay. I wanted to give you chance to
10 be heard on any legal arguments because the general rule is,
11 as Mr. Griffiths stated in his papers, that despite the
12 hardship stockholders of a company under bankruptcy law
13 aren't allowed to get distributions, that is property out of
14 the estate, until the creditors have been paid in full.

15 And the sad reality I'm confronting is -- and I
16 don't have the exact figures -- but I think the creditors
17 are in the 15 to 25 percent range in terms of getting paid
18 back, and unfortunately stockholders have to wait until the
19 creditors have been paid in full before stockholders can get
20 anything.

21 MS. VIALL: Okay. So you're telling me that we
22 have no alternative.

23 THE COURT: Sadly, yes.

24 MS. VIALL: Yeah, we've --

25 THE COURT: I'll give you a full ruling in a

1 minute, Ms. Viall --

2 MS. VIALL: Okay.

3 THE COURT: -- but I do want to give you a full
4 and fair chance to be heard with any legal points if you
5 have anything further you'd like to tell me.

6 MS. VIALL: Okay, let me just check one second,
7 please.

8 THE COURT: Of course.

9 (Pause)

10 MR. VIALL: Judge?

11 THE COURT: Yes, sir. Is this Mr. Viall?

12 MR. VIALL: What I can't understand,
13 (indiscernible -00:22:52) take our money, is that we
14 purchased the stock through General Motors, they changed --
15 they changed our stock to Motors Liquidation, and then they
16 bought -- when they sold us the stock they -- Motors
17 Liquidation had already gone into bankruptcy and we didn't
18 know it, and we didn't know they were in bankruptcy until a
19 year and a half or so later.

20 And I -- to me that's just about as much
21 (indiscernible - 00:23:30) as can be done. But I don't know
22 the law, I have no idea about the law, but I know right from
23 wrong.

24 THE COURT: I understand, sir.

25 MR. VIALL: Sir? Sir?

1 THE COURT: Yes, sir?

2 MR. VIALL: I heard you say something. I'm kind
3 of hard of hearing.

4 THE COURT: Okay. I'll speak real loud when I
5 issue my ruling.

6 MR. VIALL: Thank you.

7 THE COURT: Certainly.

8 Mr. Griffiths, do you want to reply orally?

9 MR. GRIFFITHS: Your Honor, only to say that these
10 proceedings don't affect the claimant's rights as against
11 E*TRADE, and of course we can put that in the order if Your
12 Honor so chooses.

13 THE COURT: You were reading by mind,
14 Mr. Griffiths.

15 I am going to rule now, and for the record, just
16 in case there's a desire to appeal, I would like to
17 incorporate my earlier explanations of my rulings with
18 respect to Old GM stockholders in any record on appeal, but
19 I am forced to disallow -- excuse me -- to reclassify these
20 claims from creditor claims to equity claims. And while
21 these are technically conclusions of law, I want to explain
22 it in more everyday talk than I might otherwise.

23 A large company like GM has both creditors who it
24 owes money to and has stockholders who are in a sense
25 partial owners of a company, and under bankruptcy law the

1 creditors of a company have to be paid first before those
2 who are owners of the company can get paid or can get paid
3 distributions. Because in essence as a matter of law all
4 that they own is really after the creditors have been taken
5 care of.

6 So under the Bankruptcy Code we have priorities
7 which establish different priorities among different kinds
8 of creditors, and then if all of those creditors have been
9 taken care of, stockholders, who are called equity holders,
10 can recover.

11 Here, as I indicated in argument on the motion,
12 Old GM's creditors haven't been paid in full. I don't know
13 the exact amount that they would be getting under the plan,
14 but I do know absolutely positively it's less than 100
15 percent. And until the creditors are paid I can't treat
16 stockholders like creditors.

17 Technically speaking the claims filed by the Viall
18 family aren't being disallowed, they're not being thrown
19 out, but they're being reclassified to what we call equity,
20 which is stockholder claims mainly.

21 But I do have to tell you that based on the facts
22 as I know now -- as I now know them there's practically zero
23 chance that there's going to be enough value in this estate
24 to pay stockholders.

25 I well recognize the hardship on this to the Viall

1 family and to all of the other literally thousands of GM
2 stockholders, but unfortunately, I've got to comply with the
3 law.

4 Now, I do want to say for the avoidance of doubt
5 that my reclassifying this claim as equity has nothing to do
6 whatever with any claims the Viall family might have against
7 any stockbroker who caused them to buy their GM stock.

8 And I want to take you up on your offer,
9 Mr. Griffiths, to say in plain English, that nothing in this
10 order affects any rights the Viall family might have against
11 anybody other than Old GM. Am I correct that no claim was
12 asserted against New GM?

13 MR. GRIFFITHS: Yes, Your Honor.

14 THE COURT: Okay. I want you to be very clear in
15 the order that you present to me what I'm holding on the one
16 hand and what I'm not addressing on the other. And in
17 essence what I'm saying is what you said to me, perhaps in
18 slightly different words.

19 Okay, Mr. and Mrs. Viall?

20 MR. VIALL: Yes, sir.

21 THE COURT: I can't take reargument because I was
22 forced to rule, but do you understand my ruling?

23 MR. VIALL: Well, yes, sir, I don't like it, but I
24 do understand it. And I appreciate -- I appreciate your
25 information and I appreciate what you've done for us.

1 But now my wife talked to the Attorney General of
2 the State, and he told her that as soon as this got out of
3 Federal Court that he could get our money. But it had to
4 get out of Federal Court first before he could do anything.

5 THE COURT: Well, I didn't hear every word that
6 you said, Mr. Viall, because of the quality of the phone,
7 but I think I got most of it.

8 What state are you calling, from, sir?

9 MR. VIALL: Alabama.

10 THE COURT: Uh-huh. Okay. I am not ruling in any
11 way on what the Alabama Attorney General can do or can't do,
12 although I am saying that neither your family nor the
13 Alabama Attorney General can get anything out of the general
14 -- Old General Motors' estate -- what we call Old GM, except
15 the same way that any other stockholder will ultimately be
16 able to get anything out of the estate.

17 MR. VIALL: Yes, sir.

18 THE COURT: Okay.

19 MR. VIALL: Well, I want to thank you, sir, very
20 much. I appreciate it.

21 THE COURT: I wish you well, sir, and your wife as
22 well.

23 MS. VIALL: Thank you, sir, I appreciate that.
24 God bless.

25 THE COURT: God bless you. You may stay on or

1 stay off as you prefer.

2 MR. VIAL: Thank you, sir.

3 MS. VIAL: Thank you.

4 THE COURT: Okay. Mr. Griffiths, your next
5 matter, please.

6 MR. GRIFFITHS: Thank you, Your Honor.

7 Just to confirm that you're ruling applies to
8 Mr. Timothy G. Mayer, M-A-Y-E-R, in the 214th omnibus
9 objection?

10 THE COURT: These are people with the same facts
11 but who didn't orally argue?

12 MR. GRIFFITHS: Correct, Your Honor.

13 THE COURT: Yes, sir.

14 MR. GRIFFITHS: Thank you, Your Honor.

15 Lastly before moving to the last contested matter
16 on the agenda this morning I have one uncontested matter
17 that we are handling, which is item number 1 in Section 2,
18 it is an objection to proof of claim 28560 filed by
19 Ms. Calhoun, C-A-L-H-O-U-N.

20 Ms. Calhoun was a former employee of the debtors
21 who was represented by the IUE CWA union, her claim, which
22 was for a wrongful termination and payment of wages, is
23 covered under a settlement agreement that was entered into
24 between Old GM and various what we call splinter unions on
25 September 3rd, 2009, and therefore her claim, we

1 respectfully request permission to enter an order
2 disallowing and expunging her claim.

3 THE COURT: I heard part of what you said, but I
4 didn't hear it all.

5 She had a settlement agreement that was entered
6 into in September 2009?

7 MR. GRIFFITHS: Your Honor, the various --
8 settlement agreements were entered into by various unions
9 representing former employees of the debtors. As Your Honor
10 well knows, the UAW had the -- a master settlement agreement
11 with the debtors. Various smaller unions --

12 THE COURT: Those that were sometimes called
13 splinter unions?

14 MR. GRIFFITHS: Correct, Your Honor. Represented
15 their constituents to enter into a settlement agreement
16 whereby New GM would provide retiree medical benefits to any
17 eligible participants who weren't receiving Medicaid and
18 Medicare, and then -- and as a result any proofs of claims
19 filed by those claimants could then be disallowed and
20 expunged by the Court.

21 THE COURT: Okay. So these claimants will get
22 whatever their union got for them as part of the deal that
23 was -- for the splinter -- that particular splinter union,
24 but you're saying that their additional claim has to be
25 disallowed for that reason and for reasons you argued in

1 earlier cases on the right to modify benefits.

2 MR. GRIFFITHS: Correct, Your Honor.

3 THE COURT: Yes. Is that claimant Calhoun on the
4 phone?

5 MR. GRIFFITHS: I don't believe so, Your Honor.

6 THE COURT: Okay.

7 MR. GRIFFITHS: It was uncontested.

8 THE COURT: Your motion to disallow is sustained.

9 Put in the order for reasons explained at length in the
10 earlier proceedings in this case.

11 MR. GRIFFITHS: Yes, Your Honor.

12 And that closes the matters for Weil, Gotshal &
13 Manges. My co-counsel, Stephanie Greer of Dickstein Shapiro
14 can handle item number 3 on the agenda.

15 THE COURT: Okay. Ms. Greer?

16 MR. GRIFFITHS: Thank you, Your Honor.

17 MS. GREER: Good morning, Your Honor, Stephanie
18 Greer from Dickstein Shapiro on behalf of the GUC Trust.

19 Your Honor, most of our contested matters -- or
20 actually all of our contested matters got adjourned for
21 today.

22 THE COURT: I'm going to have to fine tune the
23 sounds. The good news is the drilling stopped, but would
24 you still speak a little louder, please.

25 MS. GREER: Sure, Your Honor, sorry about that.

1 Most of our contested matters -- all of our
2 contested matters have actually been adjourned for today.
3 We're in the process of trying to resolve a fair amount of
4 the claims and also was responding to a request from new
5 counsel to adjourn one of the contested matters on for
6 today.

7 So all I've got, Your Honor, is the 286th omnibus
8 objection which is uncontested, it's a no liability
9 objection. We had five claims on that objection. Three of
10 those are going forward, one has been adjourned, and we've
11 withdrawn as to one of those.

12 If Your Honor doesn't have any questions we can
13 submit an order to the clerk later on.

14 THE COURT: No, I have no questions, Ms. Greer,
15 that's fine. So just make it happen.

16 MS. GREER: Thank you, Your Honor.

17 Next I want to turn it over to Mr. Davidson of
18 King & Spalding on behalf of New GM for -- to handle the
19 Linda Mitchell motion for relief from stay.

20 But before I do, Your Honor, I just wanted to
21 point out that Ms. Mitchell has not filed any proof of claim
22 against the debtors, so the debtors don't have any position
23 -- or the GUC Trust does not have any position on the
24 matter. We'll be here and listen to Ms. Mitchell argue, but
25 I wanted to note for the record that she has not filed a

1 proof of claim against the debtors, and so the GUC Trust
2 takes no position.

3 THE COURT: Okay. Mr. Davidson?

4 MS. GREER: Thank you, Your Honor.

5 MR. DAVIDSON: Good morning, Your Honor, Scott
6 Davidson from King & Spalding for General Motors LLC.

7 This is Ms. Mitchell's motion, I didn't know if
8 you wanted to hear from her first.

9 THE COURT: Yes, I think I should.

10 Ms. Mitchell, you have a motion for relief from
11 the stay, and I'm a little confused because a motion for
12 relief from the stay means that you want to sue Old GM and
13 yet you don't have a claim against Old GM. So when you make
14 your remarks please help clarify that for me, please.

15 Ms. Mitchell, I'll hear your argument now?

16 Ms. Mitchell?

17 MS. MITCHELL: (Indiscernible - 00:36:23) so
18 they're getting to make sure that they are in the microphone
19 and speak very clearly and loudly because of my hearing
20 impairment.

21 THE COURT: I'm sorry, Ms. Mitchell, but the
22 lawyer for New GM hasn't spoken yet. The lawyer for Old GM
23 pointed that you filed a claim against Old GM. And when I
24 spoke I said that I needed help in understanding your motion
25 for relief from the stay because you hadn't filed a claim

1 against Old GM.

2 So when you make your argument include responding
3 to that -- that fact, please.

4 MS. MITCHELL: Okay, I'll do that.

5 My response to the reason that I did not file a
6 claim against Old GM is that when I attempted to I was told
7 through MLC, who was handling everything, that because mine
8 was a warranty issue that it did not belong to Old GM and
9 that I needed to take it up with New GM. And that is what
10 I've been trying to do is take it up with them. And so
11 that's why I have not addressed it with Old GM.

12 And even when I talked to them in the last several
13 months they, you know, don't have a position of course with
14 me because they say that the liability got turned over to
15 New GM.

16 THE COURT: Okay. Now, New GM talks about what's
17 in the sale order and what New GM agreed to take on and what
18 it did not agree to take on. Do you want to give me any
19 argument on how you think I should construe that sale order?

20 MS. MITCHELL: Yes, sir, I most certainly do.

21 The first thing that I would like to do is I would
22 like to address my motion concerning the co-debtors. Since
23 there has been really no objection to my motion to have them
24 released and separated out of the bankruptcy, and given the
25 fact that Auto Nation did not declare bankruptcy, I would

1 like to ask the Court if they would grant motion in any
2 favor to separate out the co-defendants from this bankruptcy
3 so that I can proceed forward with my case with them in Fort
4 Worth court.

5 THE COURT: Now, by co-defendants you meant
6 defendants other than either Old GM or New GM?

7 MS. MITCHELL: That is correct.

8 THE COURT: Uh-huh. Okay. And did you name
9 automation as -- or was that Auto Nation?

10 MS. MITCHELL: Auto Nation.

11 THE COURT: Okay. Were there any others?

12 MS. MITCHELL: Well, it was defendant's Auto
13 Nation of Fort Worth Motors Ltd. doing business as Bankston
14 Chevrolet Fort Worth.

15 THE COURT: Uh-huh. Okay. Any others?

16 MS. MITCHELL: No -- no, it's just them and then
17 at the time Old GM.

18 THE COURT: Right, I'm with you. Okay. Do you
19 want to say anything about the words of the sale order and
20 compare that to your warranty claim?

21 MS. MITCHELL: Yes, sir, I do.

22 New General Motors, you know, has taken the
23 position that they didn't assume the liabilities of my case;
24 however, when you read the sale order, you know, it makes
25 statements such as -- as in paragraph 56, "Notwithstanding

1 the foregoing the purchaser has assumed the seller's
2 obligations under state lemon law statutes which require
3 manufacturer to provide a customer" -- I mean I'm sorry --
4 "a consumer remedy when the manufacturer is unable to
5 conform the vehicle to warranty as defined in the applicable
6 statute. After a reasonable number of chance further
7 defined in the statute and other regulated" -- I'm sorry --
8 "and other related regulatory obligations under such
9 statute."

10 THE COURT: Yeah, but where I'm confused is that
11 GM repurchased your car under the lemon law, they bought
12 your car back. So what damages do you have left?

13 MS. MITCHELL: It is true, we did go through the
14 lemon law issue with them, but the problem was is that I
15 didn't get restored whole, because the truck was actually in
16 the service center for 190 days in 2006, and every time I
17 went and picked it up it -- I only got to drive it maybe a
18 day or two before it had to be towed back in again.

19 And at the lemon law hearing when you read the
20 ALJ's decision he talks about in there that I had presented
21 receipts for actual losses and damages of over \$100,000, not
22 to mention that when -- as he gave the order it did not pay
23 off the truck.

24 In Texas when you can prove that under the
25 warranty that the manufacturer and the dealer dealt with you

1 in a misleading way, in a deceptive way, then you can bring
2 the Texas Deceptive Trade Practices Act. And everything
3 that I presented at the lemon law hearing I presented as the
4 Deceptive Trade Practices Act. And in that hearing, through
5 direct testimony from General Motors representatives and the
6 dealer representatives and hard copy evidence of all my work
7 orders, it was proven that both defendants intentionally
8 caused me harm.

9 The dealer caused me harm by withholding
10 information from me about three work orders that had
11 actually been done on the truck prior to me even buying it.

12 The manufacturer exasperated the problems that I
13 was having with the truck and went against their own
14 warranty program and their own standards by which they
15 address their warranty program and that when six months
16 after -- seven months after I had the truck I had a major
17 breakdown in a town called Rock Springs, Wyoming, which I
18 sent you receipts of all of my work orders.

19 Rock Springs, Wyoming I found out after they towed
20 my truck to a dealership there called Great Western
21 Autoplex, was not an authorized service center for my truck.
22 They did not have the tools to work on my truck, they did
23 not have a lift to be able to lift my truck up and get up
24 underneath it, they didn't have a mechanic there that was
25 trained in the knowledge of my truck.

1 And when I found this out the very next day I
2 called the service center back and I said, you can't leave
3 my truck in an unauthorized service center that doesn't know
4 anything about my truck. This is a commercial truck. This
5 truck is costing me over \$1,000 a month just in notes, not
6 to mention the insurance and everything. I need it back on
7 the road, so I need someone working on it that knows what
8 they're doing. And my warranty says that it has to go to an
9 authorized service center.

10 On page of my warranty book it states there -- oh,
11 hold on, I've got it right here -- that -- it talks to the
12 customer after you purchase a vehicle, and when I purchased
13 my vehicle I purchased it brand new, and I purchased it with
14 a glove box warranty, and in this glove box warranty it said
15 to me, "Your selling dealership has made a large investment
16 to insure that you have the proper tools that they" -- I'm
17 sorry -- "that they have the proper tools, training, and
18 parts inventory to make any necessary warranty repairs
19 should they be required during the warranty period. We ask
20 that you return your selling -- to your selling dealer for
21 warranty repairs.

22 In the event of an emergency repair you may take
23 your vehicle to an authorized GM dealer for warranty
24 repairs; however, certain warranty repairs require certain
25 tools or training that only a dealer selling your brand may

1 have. Therefore, not all dealers are able to perform every
2 repair.

3 If a particular dealership cannot assist you then
4 contact the customer service assistant center."

5 This I did every day. For 27 days I called the
6 service center. Because Great Western Autoplex tore my
7 truck completely apart from the top down because they
8 couldn't lift it up, and they were getting service manuals
9 sent to them, and they didn't really know what they were
10 doing, and then they called me on the 27th of June and they
11 said, okay, it's ready. And when -- I had to fly to Salt
12 Lake City, Utah -- see that's where the closest authorized
13 center was, and General Motors didn't want to tow my truck
14 to Salt Lake City because of the cost. And so because they
15 were trying to save a few dollars they ended up having my
16 truck at a place that wasn't even authorized to work on my
17 truck, didn't know what they were doing. And from that
18 point on that truck never ran again right. I had nothing
19 but trouble after trouble after trouble.

20 And as a matter of fact, when I picked it up in
21 Wyoming it was not ready, the hood latches weren't on, there
22 were bolts missing, the filtering system wasn't put back on,
23 the truck wasn't secured in a secured lot location, it was
24 across the street from the dealership on the lot that was
25 just open and not locked up, but my truck wasn't locked up.

1 THE COURT: Ms. Mitchell, forgive me, I didn't
2 want to interrupt you for the last five minutes or so, but
3 the question that I asked back then is do you have anything
4 else to tell me about the language of the sale order that
5 determines what obligations New GM took on and what it
6 didn't? Do you have any further to tell me on the sale
7 orders words?

8 I understand how frustrating this is for you, but
9 I also understand the truck was bought back. Do you have
10 anything to tell me about the words of the sale order?

11 MS. MITCHELL: Well, the -- the sale order says
12 that they assume the liabilities of the warranties, and I
13 had a warranty. My warranty didn't expire until April of
14 2011. I still owe a note on that truck, even today I still
15 pay a note on that truck.

16 And -- and in order for me to even file the DTPA
17 case I had to have a warranty recognized by the State of
18 Texas, and they recognize that State of Texas here in the
19 State Court, so I don't know why the Bankruptcy Court can't
20 recognize it as an active warranty when everything arose
21 from that warranty. All my troubles arose from that
22 warranty. And because I used everything in my lemon law
23 case to further my case because the ALJ said that I couldn't
24 recover everything under his forum that I needed to take it
25 to the DTPA, that was my next step. So as soon as he made

1 his decision I did exactly what he said that I needed to do.

2 Now, GM -- hold on, please -- GM states that in
3 question -- or statement -- hold one moment, please.

4 (Pause)

5 MS. MITCHELL: GM is also stating that 56 --
6 paragraph 56 prevents them from paying for -- or assuming
7 this obligation. However, when you look at paragraph 56 it
8 says -- I'm sorry, I lost it.

9 THE COURT: Well, 56 says:

10 "GM shall not be liable for incidental or
11 consequential damages such as, but not limited to, lost
12 wages or vehicle rental expenses resulting from breach of
13 this written warranty or any implied warranty even if the
14 glove box warranty applies."

15 Doesn't it? And that includes loss of vehicle
16 use, inconvenience, storage. Isn't that exactly the kinds
17 of things you're talking about?

18 MS. MITCHELL: Well, I am talking about those
19 things, and while the sale order eludes to that fact, their
20 (indiscernible - 00:51:55) security doesn't elude to that
21 fact.

22 THE COURT: All right, thank you.

23 All right, Mr. Davidson, do you want to respond?

24 MR. DAVIDSON: Yes, Your Honor.

25 As Your Honor pointed out this vehicle was

1 repurchased over two years before the bankruptcy filing and
2 before the 363 sale from Old GM to New GM. All of the lemon
3 law obligations were complied with back at that time. The
4 ALJ decision mandated that Old GM repurchase the vehicle for
5 about \$47,500; that was done. That ended the lemon law
6 claim.

7 Subsequent to that there was a State Court action
8 under the Texas Deceptive Trade Practices Consumer
9 Protection Act, which is not a lemon law action. That
10 action sought damages that were not assumed by New GM. The
11 New GM -- New GM did assume glove box warranties, but only
12 those liabilities that are under the glove box warranty.

13 In a normal situation it would be if a car broke
14 down that was sold prepetition but the warranty was still in
15 effect post petition New GM would be obligated to fix that
16 vehicle. However, this vehicle was repurchased two years
17 before the bankruptcy. There was no longer a glove box
18 warranty that Ms. Mitchell could assert a claim against New
19 GM -- against New GM. New GM would have had to have had the
20 opportunity to try to fix the car or do a replacement for
21 parts in the car. It never had that opportunity.

22 All of this happened way before the bankruptcy
23 filing, way before the 363 sale, and New GM can't be liable
24 for these types of obligations. I mean that's --
25 unfortunately that's -- that's the way it was.

1 I understand Ms. Mitchell's frustration as well,
2 I've spoken to her on numerous times over the last several
3 months and we've tried to resolve this matter, but this is
4 just not a New GM liability.

5 THE COURT: All right. Thank you.

6 All right, everybody sit in place for a minute.

7 MS. MITCHELL: Your Honor?

8 THE COURT: Yes, ma'am.

9 MS. MITCHELL: May I please say something else?
10 Because my warranty that I purchased, while --

11 THE COURT: You may say something else limited --
12 please don't talk over me. You may say something else
13 limited to what Mr. Davidson said, but you can't raise new
14 points now and you can't repeat what you said before now.
15 Under those rules I will let you speak one more time.

16 MS. MITCHELL: Okay. Then I need to be able to go
17 back and look at what my cart person wrote, okay?

18 THE COURT: You need to do what?

19 MS. MITCHELL: I'm hearing impaired, Your Honor,
20 and so I have a cart person here who is a court reporter
21 similar to your court reporter and she is writing down
22 everything so that I can read what is being said because
23 it's difficult to hear for me over the phone, and --

24 THE COURT: Okay.

25 MS. MITCHELL: -- you know, you're wanting me to

1 -- you're wanting me to, you know, hurry up and respond to,
2 you know, Mr. Davidson, and this issue about, you know, 56
3 and I have other issues of law that, you know, what about my
4 11 U.S.C. 5236 that exempts discharge of a debt that where
5 malicious and willful conduct took place? I mean that was
6 proven in my State Court case.

7 So is that supposed to just be just disallowed and
8 just thrown out because, you know, so then, you know,
9 General Motors, you know, they get it both ways? They get,
10 you know, a new company and then they get to ignore any laws
11 that they're company broke.

12 And I mean these were unlawful acts that they did.
13 This wasn't just something, you know, that they couldn't,
14 you know, fix my truck. I mean they deliberately took my
15 truck to -- sent my truck to a place that they knew couldn't
16 fix it, even though I begged them to get it out of there
17 daily. And it just exacerbated everything.

18 I lost my business, I lost everything -- ended up
19 losing everything that I'd worked eight long years building
20 my business putting it together because of -- simply because
21 I had the misfortune of buying a General Motors product to
22 help me run my business.

23 And when they take on lemon laws and lemon law
24 statutes in the State of Texas if you don't fully recover
25 and get made whole under the lemon law you're allowed to go

1 under the DTPA, it's a tie in statute to the lemon law. And
2 everything that I asked for under my DTPA case had to do
3 with warranty. Did their warranty fail? Did their warranty
4 -- did they mislead me? Every -- if you read my order,
5 which I sent to you, which was Exhibit B and then the
6 Court's charges, you'll find that they were found guilty of
7 everything because we were able -- we were able to prove it
8 through testimony and documentation.

9 And what I'm hearing from you is simply because
10 this sale order says that oh, well, we didn't take on
11 liabilities like that, you know, like defendant stated in
12 question -- statement 30 that New GM agreed to assume
13 obligations under glove box warranties that continued in
14 existence after the closing of the 363 sale, because it was
15 these obligations that were important to New GM, not the
16 warranty liability asserted by me prior to the 363 sale.

17 So does that mean that everybody that had a
18 General Motors product that had problems that we all got
19 written off because we were prior? Because that's not what
20 the sale order says. The sale order says that they are
21 responsible for prior to closing, during the bankruptcy, and
22 after the warranty issues.

23 THE COURT: All right.

24 MS. MITCHELL: That's what --

25 THE COURT: Thank you.

1 MS. MITCHELL: -- that's what it says.

2 THE COURT: All right. Forgive me, you're --
3 you're repeating yourself for the second or third time,
4 ma'am, and I think I understand the issues. Remember that
5 oral argument supplements what people have already said in
6 the briefs.

7 I have one last question for you, Mr. Davidson,
8 before I rule. Do you care if I rule that she can go
9 against people other than New GM and Old GM?

10 MR. DAVIDSON: No, Your Honor, I just represent
11 New GM.

12 THE COURT: I'm sorry.

13 MR. DAVIDSON: I just represent New GM so --

14 THE COURT: Okay.

15 MR. DAVIDSON: -- to the extent there's a --

16 THE COURT: All right.

17 MR. DAVIDSON: -- there's another (indiscernible -
18 00:59:18).

19 THE COURT: Then everybody sit in place for a
20 minute, you're going to hear a moment of silence.

21 (Recess at 10:30 a.m.)

22 THE COURT: Granting the motion to the extent that
23 it asks for relief from the stay to the extent it's
24 necessary to proceed against entities other than Old GM and
25 New GM, and to the extent necessary, I'm granting permission

1 to sever any of those other entities. But the motion is
2 already -- it's otherwise denied.

3 And I'm further ruling for the avoidance of doubt
4 that New GM is protected under the sale order from claims
5 other than with respect to the lemon law claim.

6 And further ruling that the lemon law claim was
7 fully satisfied two years before the sale under which New GM
8 acquired GM assets.

9 As facts I find an undisputed fact that the
10 vehicle was repurchased under the Texas lemon law back in
11 2007, two years before New GM bought Old GM assets. The
12 purpose of a lemon law statute is if problems with the
13 vehicle are serious enough to make the manufacturer buy back
14 the car, and that's exact whether I what Old GM did. I said
15 car, I guess here I should have said truck, but the point
16 remains the same. There were no lemon law claims left for
17 New GM to perform under.

18 I well understand that a separate claim was raised
19 under the Texas Consuming Procedures Protection Act, but
20 that is not one of the types of claims that New GM
21 contracted to assume. Rather under paragraph 56 of the sale
22 order New GM assumed only the obligation to honor the
23 standard limited warranty of repair, what we refer to as the
24 glove box warranty, which was meaningless after the vehicle
25 had already been sold back by the consumer. There was no

1 duty then to honor.

2 The terms of the warranty were very limited, and
3 these claims for events that took place long before New GM
4 even existed and before the consumer, which here is
5 Ms. Mitchell, sold back the car to Old GM did not exist to
6 be undertaken when New GM bought the company and are not of
7 the type that New GM undertook to continue to honor after
8 the sale.

9 Now, Mr. Davidson, you are to settle an order in
10 accordance with this ruling. I do want you to stick in some
11 language similar to that which Mr. Griffiths talked about in
12 connection with an earlier claimant and say that nothing in
13 this order affects the rights, if any, or affects any rights
14 that Ms. Mitchell might have against any entity other than
15 New GM or Old GM.

16 Do we have any further business today,
17 Mr. Davidson?

18 MR. DAVIDSON: Not from me, Your Honor.

19 THE COURT: Mr. Griffiths, Ms. Greer?

20 MR. GRIFFITHS: No, Your Honor.

21 THE COURT: All right, we're adjourned. Everybody
22 have a good day.

23 MR. DAVIDSON: Thank you, Your Honor.

24 MS. GREER: Thank you, Your Honor.

25 (Whereupon, these proceedings were concluded at 10:35

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I N D E X

RULINGS

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C E R T I F I C A T I O N

I, Dawn South, certified that the foregoing transcript is a true and accurate record of the proceedings.

AAERT Certified Electronic Transcriber CET**D-408

Veritext

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Date: October 16, 2012